

**UNITED STATES OF AMERICA,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** ) **No. 3:07-cr-51**  
 ) **(Phillips/Shirley)**  
 **JOHNNIE MARTIN,** )  
 )  
 **Defendant.** )

On February 14, 2008, the Honorable C. Clifford Shirley, United States Magistrate Judge, ruling from the bench, denied defendant's motion to dismiss for prosecutorial misconduct [Doc. 252]. On February 15, 2008, Judge Shirley issued a three-page memorandum and order [Doc. 269], in which he, inter alia, affirmed his oral ruling denying defendant's motion to dismiss for prosecutorial misconduct. The matter is now before the court on defendant Johnnie Martin's appeal of the memorandum and order [Doc. 283]. Defendant, now proceeding pro se, requests that this court overrule that portion of the memorandum and order in which Judge Shirley denied his motion to dismiss for prosecutorial misconduct and accordingly that this court dismiss the charges against him.

Judge Shirley's memorandum and order was issued pursuant to 28 U.S.C. § 636(b). Under that provision, the court can reconsider the magistrate judge's ruling if it is "clearly erroneous" or "contrary to law." Accordingly, the court has undertaken a careful review of the transcript of the proceedings of February 14, 2008 and the memorandum and order dated February 15, 2008. After so doing, the court concludes that Judge Shirley's rulings

are consistent with the relevant facts and applicable case law. As Judge Shirley noted, defendant has not made any specific allegations that Assistant United States Attorney (“AUSA”) David Jennings did anything overtly wrong. Moreover, the evidence simply does not support defendant’s allegation that AUSA Jennings knew or should have known that the defense would call Mr. Joe Cofer as a witness. Finally, it is important to note, as did Judge Shirley, that AUSA Jennings continues to maintain vigorously that the United States will not be calling Mr. Cofer as a witness.

The rulings rendered by Judge Shirley are accordingly **AFFIRMED** on the basis of the reasoning set forth in his oral ruling of February 14, 2008 and his memorandum and order dated February 15, 2008, whereby defendant’s appeal [Doc. 283] is **DENIED** in its entirety.

**IT IS SO ORDERED.**

**ENTER:**

s/ Thomas W. Phillips  
United States District Judge